

REMARKS

Applicants acknowledge receipt of a Final Office Action dated January 5, 2010. In this response, no claims have been added or amended. Claims 21-22 were previously added and claims 4, 19 and 20 were previously cancelled. Claims 1-3, 5-18, and 21-22 remain pending in this application.

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

Rejection Under 35 U.S.C. §102

On page 2 of the Office Action, the Office has rejected claims 1-8, 11-14, and 16-19 under 35 U.S.C. §102(a) as allegedly being anticipated U.S. Publication No. 2003/0173069 to Nitta *et al.* (hereafter “Nitta”). Applicants respectfully traverse this rejection for at least the reasons set forth below.

As a preliminary matter, it appears that the Office has inadvertently included claim 19, which was previously cancelled, in the rejections in this section.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Nitta fails to disclose, among other things, a heat exchanger assembly comprising a holder that includes a laterally protruding holding arm, “wherein the flange has at least one holding attachment with a holding and guiding groove, and wherein the holding and guiding groove is configured to receive the holding arm,” (emphasis added) as recited in claim 1.

On pages 2-3 of the Office Action, the Office states that Nitta discloses “. . . the at least one holder (200) including a laterally protruding holding arm (the tabs extending from the upper surface of member 200, see annotated figures), the flange (105) having at least one holding attachment (at the lower surface of 105) with a holding and guiding groove (see annotated figures), the holding and guiding groove (labelled ‘groove’ in the annotated figures) being configured to (interpreted to mean capable of) receiving the holding arm (labelled ‘tab’ in the annotated figures)”

Applicants submit that claim 1 recites, among other things, that i) “the holder and flange are separate pieces,” ii) “the at least one holder includes a laterally protruding holding arm” and iii) “the flange has at least one holding attachment,” (emphasis added). The Office relies on manifold block 105 of Nitta as equivalent to the flange of the present claims, and relies on fitting clasp 200 of Nitta as equivalent to the holder of the present claims. The Office further relies on assumptions as to what non-labelled marks in Nitta’s figures are, and that they are equivalent to the holding and guiding groove of the at least one holding attachment, and to the laterally protruding holding arm of the holder of the present claims.

For example, as described above, the Office interprets “the tabs extending from the upper surface of member 200” in the annotated figures of Nitta provided with the Office action to be equivalent to the laterally protruding holding arms. The Office also interprets “groove in the annotated figure” (internal quotations omitted) as being equivalent to the guiding groove of the at least one holding attachment. However, after careful review of Nitta, Applicants cannot find any disclosure at all of “tabs extending from the upper surface of member 200”, or even “tabs.” Furthermore, Nitta does not disclose any features of the lower surface of 105, or even show them in the figures, to provide support for an alleged groove or holding attachment being configured to receive the tabs.

Applicants submit that the lower surface of 105 in Nitta’s figure is not visible. For example, see **Illustration 1** below.

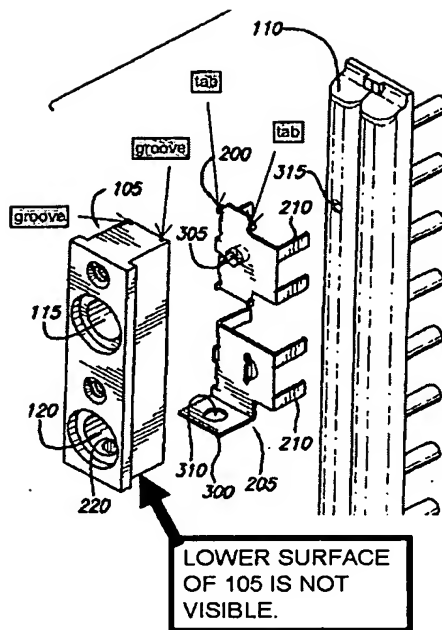


ILLUSTRATION 1

In the alternative, if another surface is taken to be “the lower surface of 105”, for example, as shown in **Illustration 2** below, such a surface is also not visible.

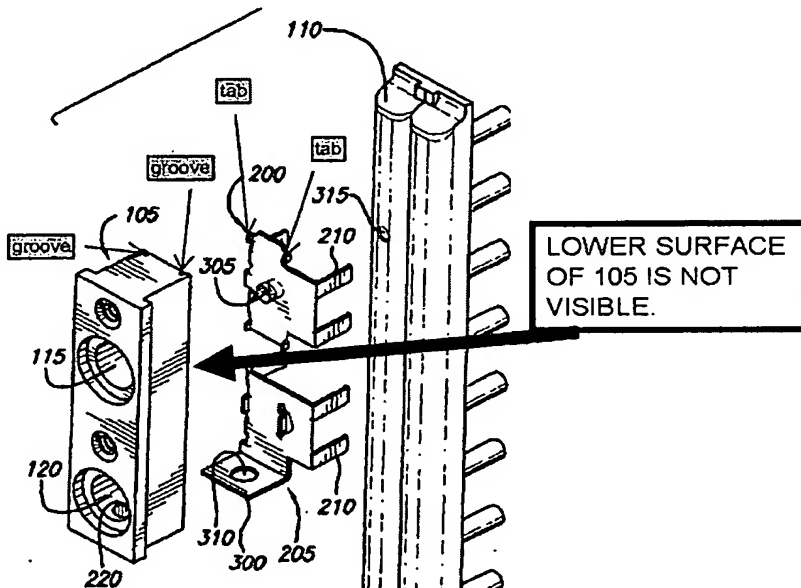


ILLUSTRATION 2

Applicants submit that Nitta's figure does not show a bottom surface, and that the "groove" features annotated in the figures are at most shown on an edge of 105 as shown in **Illustration 3** below.

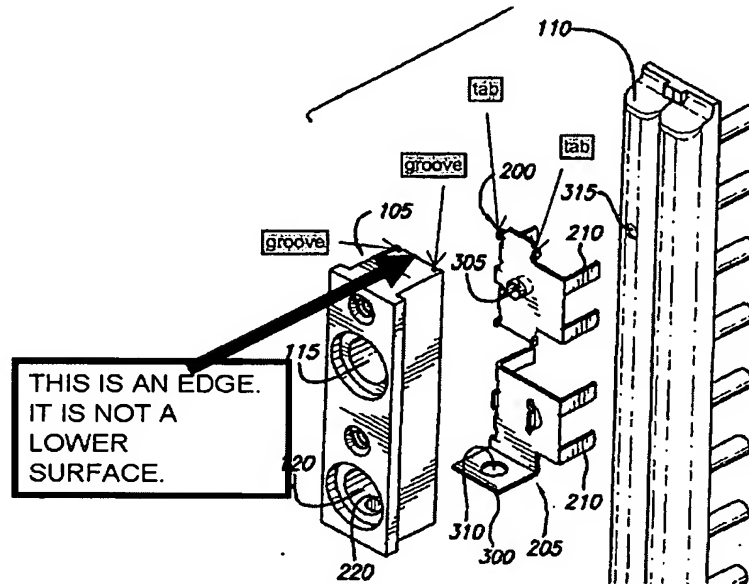


ILLUSTRATION 3

Furthermore, the Office states that Nitta's "grooves" are capable of accepting the "tabs" of Nitta's fitting clasps 200, 205. However, as shown in **Illustration 4** below, the Office's allegations are without support. For example the "grooves" noted by the Office are shown only at the edge of 105, and the "tabs" (which presumably are shown as part of fittings 200 and 205) are not visible. After careful review of Nitta, there is no disclosure as to the configuration of the "grooves" on a lower surface of 105, or as to whether the "tabs" remain present upon fitting 105 to 110 with fitting clasps 200 and 205 formed between them. Accordingly, Applicants submit that the Office has not properly established that the "grooves" are configured to accept the "tabs."

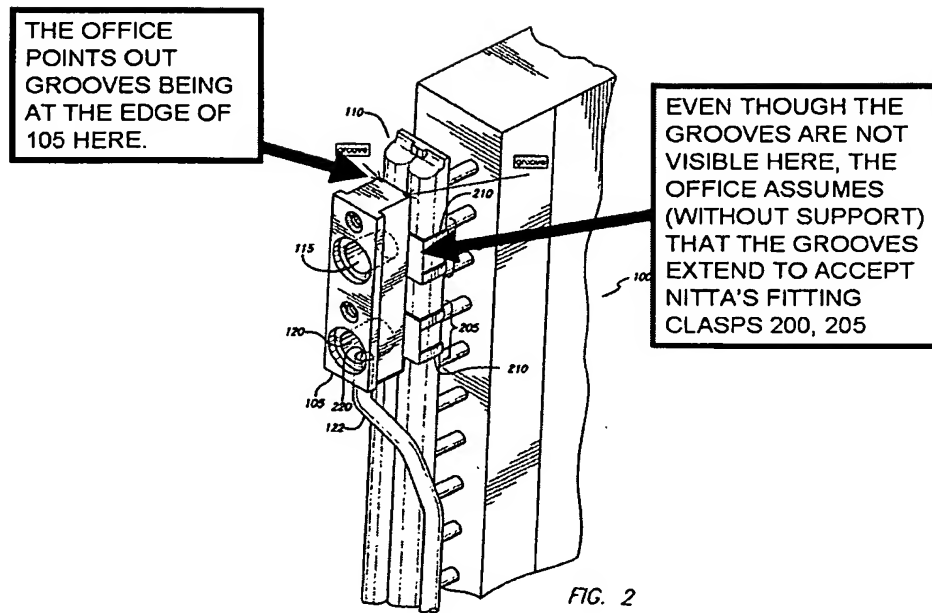


ILLUSTRATION 4

Thus, allegations of any features that are not disclosed or recognized by Nitta, especially those allegedly being on “lower surface of 105” are speculative probabilities or possibilities. On the other hand, the presently claimed invention explicitly recites features and provides support for these features with disclosure in both the specification and figures of the instant application.

Regardless of whether or not such features appear in the drawings, they are not discussed at all in Nitta’s specification as to convey to one of ordinary skill in the art their form or function. In such a case, applying an arbitrary interpretation to the form, function, properties or characteristics of features allegedly shown in drawings imports with it flawed and speculative probabilities or possibilities that must, by definition, fall short of proving inherency.

Thus, Applicants submit that the Office has inadvertently, but improperly, imported features to Nitta which are not explicitly or implicitly disclosed by that reference. Furthermore, even if one were to rely upon inherency to support the Office’s statement, a basis in fact and/or technical reasoning to reasonably support the determination that an allegedly inherent characteristic necessarily flows from the disclosure of the prior art must be provided. See MPEP § 2112, Part IV, citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat.

App. & Inter. 1990). **Any inherent disclosure in a reference may not be established by probabilities or possibilities.** See MPEP § 2112, Part IV, citing *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Furthermore, even if such “tab” or “groove” features, even without proper labels or supporting disclosure, were able to convey their form or function, the Office has not established that the groove in Nitta is a holding and guiding groove. Applicants submit that without an express descriptive disclosure in Nitta to support these features, all that can be conveyed from the figures is that the “groove” is present at an edge of 105. In other words, there is no indication in Nitta that the groove is capable of holding anything.

Additionally, Applicants submit that Nitta fails to disclose that the flange has at least one holding attachment. For example, the Office alleges that the at least one holding attachment is found “at the lower surface of 105” in Nitta’s figure but no such feature is disclosed in the reference. Also, Applicants note that the grooves which the Office alleges to be on Nitta’s flange 105, are not directly part of a holding attachment, but are instead part of the flange itself. As noted in the claim, the “flange”, “holding attachment” and “holding and guiding groove” are three different features, yet the Office has only pointed out two different features that are actually shown: the feature labelled as 105 in Nitta’s figures, and the features shown as “groove” in the annotated figures provided by the Office. Thus, Nitta fails to disclose all of Applicants’ claimed features.

For at least the reasons discussed above, Nitta does not anticipate claims 1-8, 11-14, and 16-20 because Nitta does not disclose all of the features of claim 1-8, 11-14, and 16-20. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 102.

Rejections Under 35 U.S.C. § 103

Claims 9-10

On pages 3-4 of the Office Action, the Office has rejected claims 9-10 as allegedly being unpatentable over Nitta.

As described above, Nitta fails to disclose, teach or suggest all of the features of independent claim 1 from which claims 9-10 depend. Thus Nitta does not render claims 9-10 unpatentable. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 15

On page 4 of the Office Action, the Office has rejected claim 15 as allegedly being unpatentable over Nitta in view of EP 1158261 to Sasaki (hereafter “Sasaki”). Applicants respectfully traverse the rejection.

As outlined above, with respect to the rejection of independent claim 1, Nitta fails to disclose, teach or suggest all of the features of independent claim 1. With respect to the rejection under §103 of dependent claim 15, the Office has combined Nitta with Sasaki. However, Sasaki fails to cure the fundamental deficiencies in Nitta as outlined above. For example, Sasaki fails to disclose, among other things, a heat exchanger assembly comprising a holder that includes a laterally protruding holding arm, “wherein the flange has at least one holding attachment with a holding and guiding groove, and wherein the holding and guiding groove is configured to receive the holding arm.” Thus, Applicants submit that claim 15, which ultimately depends from independent claim 1, is non-obvious at least by virtue of its dependency from claim 1. Reconsideration and withdrawal of the current rejection are respectfully requested.

CONCLUSION

Applicants submit that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith,

Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 2010-04-05

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6162
Facsimile: (202) 672-5399

Pavan K. Agarwal
Attorney for Applicants
Registration No. 40,888